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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/004,420 01/08/98 RICHTER

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EXAMINER

QM22/0319

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ART UNIT

PAPER NUMBER

3736

DATE MAILED:

03/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/004,420

Applicant(s)

RICHTER ET AL.

Examiner

Ryan C. Carter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) 20-23 and 41-69 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 11-14, 19, 24-32, 35-40, 70, and 72-75 is/are rejected.
- 7) ☒ Claim(s) 5-10, 15-18, 33-34, 71, and 76-78 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Response to Amendment After Final

Applicant's Remarks in Paper No. 13 are persuasive, to the extent that withdrawal of finality of the Examiner's action in Paper No. 12 is necessitated. Accordingly, the period for response is restarted pursuant to the mailing of the present Action.

Election/Restrictions

Claims 20-23 and 41-69 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-4, 11-14, 19, 24-32, 35-38, 70, and 72-75 are rejected under 35 U.S.C. 102(e) as being anticipated by Cimochoowski et al. With respect to claims 1-4, 11-14, 19, 24, 26-29, 31, 35-37, 70, and 72-75, Cimochoowski et al. disclose an endoluminal implant comprising a fixation device (stent) and at least one sensor placed onto a sensor support/carrier (solder) for coupling to the stent. The solder has a surface

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for receiving the sensor. The implant is inserted into the body, and is also secured to the body, for example, "with metal hooks to firmly attach the graft to the vessel wall."

The implant may also be expanded for fixation in the vessel. (See, e.g., col.25,lns.33-40 and 50-60)

With respect to claims 25,30, and 32, Cimochoowski et al. disclose an endoluminal implant comprising a stent and a sensor placed into a sensor support (226) which couples the sensor to the stent by coating. The implant is inserted into to body, and is also secured to the body, for example, "with metal hooks to firmly attach the graft to the vessel wall." (See col.25,lns.35-40)

Regarding claim 38, Cimochoowski et al. disclose an endoluminal implant comprising a stent, into the wall of which is incorporated dielectric sensing filaments (see, e.g., col.24,lns.50-55). The stent is inserted into to body, and is also coupled to the body, for example, "with metal hooks to firmly attach the stent to the vessel wall." (See col.25,lns.35-40)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cimochoowski et al. Cimochoowski discloses the use of hooks or a balloon to couple the device to the vessel. It would have been obvious to one skilled in the art to use such

known materials as glue or sutures, to provide a mere alternative means for coupling the device to the vessel.

Allowable Subject Matter

Claims 5-10,15-18,33-34,71, and 76-78 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed February 20, 2001 have been fully considered but they are not fully persuasive. Applicant has traversed the rejection of claim 38, by arguing that Cimochoowski does not show a sensor that is coupled to the bodily lumen itself. Applicant asserts the following: "Nothing in (the patent's) description mentions or even implies coupling a sensor to a lumen." The Examiner disagrees, and points to col.24,lns.50-55 as support for his contention that Cimochoowski does disclose a sensor that is coupled to the bodily lumen itself, as the sensor is incorporated into the wall of the stent. In other words, the stent itself is the sensor.

The extent of Applicant's arguments with respect to claims 1-4,11-14,24-32,35-38,70,and 72-75 deals with the Examiner's failure to reject claim 19, which the Applicant contends has the same basis for distinction over Cimochoowski. The Examiner agrees, and apologizes for this disparity in his examination of the claims. Accordingly, the Examiner has rejected claim 19 under 35 U.S.C. §102, and the rejection of claims 1-4,11-14,24-32,35-38,70, and 72-75 is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan C. Carter whose telephone number is (703)308-2990. The examiner can normally be reached on Monday-Thursday, 9a.m.-5p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, --- --- can be reached on ---. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-0758 for regular communications and (703)308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



**ERIC F. WINAKUR
PRIMARY EXAMINER**